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January 27, 2006

VIA HAND DELIVERY

Mr. Charles Terreni
Chief Clerk of the Commission
SC Public Service Commission
P. O. Drawer 11649
Columbia, SC 29211

RECEIVED
2006 JAN 27 PM 4:58
SC PUBLIC SERVICE
COMMISSION

RE: The Office of Regulatory Staff v. K&K Investments, Inc d/b/a
Apartment Movers, Etc. and America's Best Moving System
Docket No. 2005-22-T

Dear Mr. Terreni:

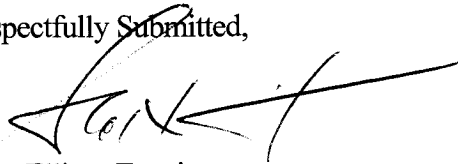
Enclosed please find a proposed order in the above submitted jointly by the Office of Regulatory Staff ("ORS") and K&K Investments Inc ("K&K"). The proposed order requires K&K to continue to cooperate fully with the ORS and to comply with all statutes, rules and regulations of the South Carolina Public Service Commission ("Commission"). K&K agrees that it will cooperate and comply.

The record herein reflects that throughout the ORS investigation and continuing to the present, K&K cooperated fully with the ORS and has brought its operations within compliance of the statutes, rules and regulations of the Commission. As important, K&K enjoys the highest level of customer satisfaction. Out of a good faith desire to cooperate fully with the ORS in connection with its investigation, K&K as worked diligently together with the ORS to craft an order containing language designed to serve the interests of each; in this spirit of compromise, K&K has agreed to join in the order proposed, reserving its rights and defenses recognized by law in the event the Commission declines to accept fully the joint proposed order.

Mr. Terreni
January 27, 2006
Page 2

Also enclosed please find a copy of the Joint Proposed Order which I would request that you date stamp and return to me via the courier. Please note that we are serving all counsel of record by carbon copy.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott Elliott", written over a horizontal line.

Scott Elliott, Esquire
Elliott & Elliott, P.A.
Attorneys for K&K Investments, Inc.

SE/jcl

Enclosure

cc: John J. Pringle, Esquire w/enc.
Wendy B. Cartledge, Esquire w/enc.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

RECEIVED
2006 JAN 27 PM 4:58
SC PUBLIC SERVICE
COMMISSION

IN RE:

K&K Investments, Inc., d/b/a Apartment)
Movers, Etc. and America's Best Moving)
System)
Petitioner)
_____)

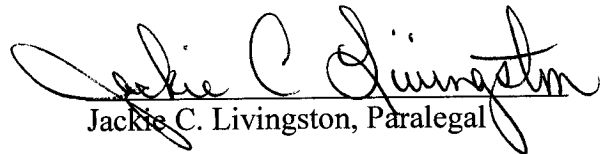
CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of the Joint Proposed Order as indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

PARTIES SERVED:

John J. Pringle, Jr., Esquire
Ellis Lawhorne & Sims, PA
P. O. Box 2285
Columbia, SC 29202

Wendy Cartledge, Esquire
Office of Regulatory Staff
1441 Main Street, Ste. 300
Columbia, SC 29201


Jackie C. Livingston, Paralegal

Columbia, South Carolina

January 27, 2006

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET No.: 2005-22-T

RECEIVED
2005 JAN 27 PM 4:53
SC PUBLIC SERVICE
COMMISSION

IN RE:

Request for Investigation by the Office of
Regulatory Staff of K&K Investments, Inc.,
d/b/a Apartment Movers, Etc., and
America's Best Moving System,

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JOINT PROPOSED ORDER

INTRODUCTION

This matter comes before the South Carolina Public Service Commission ("Commission") by virtue of a directive issued by this Commission February 1, 2005, requesting the Office of Regulatory Staff ("ORS") to investigate K&K Investments, Inc., d/b/a Apartment Movers, Etc. and America's Best Moving System ("K&K" or "Respondent") with respect to the franchising practices of that company and related matters. By directive dated February 23, 2005, the Commission held over the Respondent's request for a rate increase (Docket No. 2004-240-T) until the ORS investigation was completed and ruled on by the Commission.

The ORS notified the Commission by correspondence dated April 25, 2005, that it had completed its investigation. By Petition dated May 31, 2005 the ORS notified the Commission of its findings and requested a hearing on this matter. By directive dated June 15, 2005, the Commission granted the ORS's request to hold a hearing on its Petition. Over the signature of the Chief Clerk and Administrator, the Respondent K&K was served a copy of the ORS petition and a notice requiring the Respondent to answer by June 24, 2005.. The Commission set a

hearing on the ORS Petition for October 6, 2005, and by notice dated June 29, 2005, notified the Parties of the hearing date. The Respondent filed and served its Answer on the ORS on August 1, 2005, denying that it engaged in franchising and alleging good faith in its efforts to comply with Commission rules and regulations. On August 20, 2005, Loofar Enterprises, LLC , d/b/a Apartment Movers, Etc. (“Loofar”) petitioned the Commission to intervene in this docket. Thereafter, the Respondent filed and served a petition on August 22, 2005, seeking authority to implement a fuel surcharge. By directive dated August 23, 2005, the Commission held over the Respondent’s request for a fuel surcharge to be addressed at the October 6, 2005 hearing.

On October 6, 2005 at 10:30 a.m., a public hearing was held in connection with the ORS petition and the results of the ORS investigation in the Commission’s hearing room located at Synergy Business Park, 101 Executive Center Drive – Saluda Building, Columbia South Carolina. The hearing was held before the Commission with Chairman Randy Mitchell presiding. Joseph M. Melchers, Esquire, Chief Counsel of the Commission, served as Legal Advisor to the Commission. Wendy B. Cartledge, Esquire represented the ORS. Scott Elliott, Esquire represented K&K. John J. Pringle, Jr., Esquire represented the Intervenor, Loofar.

At the outset of the hearing, Ms. Cartledge advised the Commission the parties agreed that the ORS petition needed to be amended as follows: K&K added a fuel/regulatory assessment (Petition, paragraph 7, line 3) and the Franchise Agreements were signed with KS Investments, Inc. (“KS Investments”) and royalties were paid to KS Investments (Petition, paragraphs 8, 9 and 10). Ms. Cartledge also advised the Commission that the parties agreed that the dockets in the following matters would be admitted into the record without objection: Docket No. 2004-120-T, Application of Big Five, LLC, d/b/a Apartment Movers, Etc. for a Class E Certificate of Public Convenience and Necessity; Docket No. 2001-261-T, Application of Trey Ingram d/b/a

Apartment Movers, Etc. of Charleston for a Class E Certificate; Docket No. 2004-97-T, Application of Trega, LLC d/b/a Apartment Movers, Etc. for Class E (HHG) Certificate of Public Convenience and Necessity; Docket No. 2003-235-T, Application of K&K to Transfer Part of a Class E Certificate of Public Convenience and Necessity to Operate a Motor Vehicle; and Docket No. 2004-292-T, Application of Loofar Enterprises, LLC d/b/a Apartment Movers, Etc. for a Class E (HHG) Certificate of Public Convenience and Necessity.

SUMMARY OF TESTIMONY

ORS presented the testimony of Patty Vowell, a transportation inspector for the ORS; L. George Parker, Jr., manager of the transportation department at the ORS; and Reba Farris, an employee of Loofar who was subpoenaed by the ORS.

Inspector Vowell, testified before the Commission concerning the compliance audits of K&K she performed on April 20, 2005 and October 4, 2005. Inspector Vowell testified that according to the Commission Rules and Regulations, a Bill of Lading is required to contain the name of the issuing carrier, the date the shipment was received by the carrier, the name and address of the shipper/consignor, the point of origin of the move and the point of destination of the move, a signed Declaration of valuation clause and the Public Service Commission identification number. Inspector Vowell further testified that the Bills of Lading must be numbered consecutively at the time of printing and contain detailed information concerning the charges, items being moved and the base liability amount of the carrier for its cargo. (Transcript, Page 13, ll 10-20).

Inspector Vowell testified that during the April 20, 2005 compliance audit she found that the Bills of Lading were not numbered consecutively and that they did not have the PSC number on the Bills of Lading. (Transcript, Page 13, ll 21-22). Inspector Vowell further testified that

when she asked Mr. Swanson to explain the difference in the charges and why the charges would not calculate correctly, Mr. Swanson stated that a gas surcharge and assessment had been added to recoup part of their costs. Inspector Vowell testified that when she advised Mr. Swanson a fuel charge could not be added unless the Commission had approved it, Mr. Swanson stated that the problem would be corrected. (Transcript, Page 14, ll 7-19). Finally, Inspector Vowell testified that Mr. Swanson cooperated fully with any of her requests. (Transcript, Page 15, ll 20-21). The sample bills of lading from this audit were entered into evidence as Exhibit No. 2

With respect to the second compliance audit completed on October 4, 2005, Inspector Vowell testified that the numbers “came out to a zero balance” when she analyzed the guaranteed price quotes and charges to customers. (Transcript, Page 17, ll 6-10). Inspector Vowell further testified that the hourly moves she audited were also correct. (Transcript, Page 17, ll 13-14). She also found that the PSC Certificate No. had been added to the Bills of Lading and that the Bills of Lading were numbered consecutively. (Transcript, Page 17, ll 14-17). Inspector Vowell testified that she audited approximately 25 Bills of Lading and found them to be 100% in compliance with the Commission’s Rules and Regulations. (Transcript, Page 17, ll 17-20). Inspector Vowell also testified that Mr. and Mrs. Swanson cooperated fully with her. (Transcript, Page 17, ll 22-25). Samples of the bills of lading from the October 4, 2005 audit were entered into evidence as Hearing Exhibit No. 3.

Mr. George Parker, Manager of the Transportation Department of the Office of Regulatory Staff, testified concerning the investigation completed by the Office of Regulatory Staff pursuant to Commission Order 2005-52. Mr. Parker testified that the Transportation Department investigated the franchisees and their operating practices in relationship to the franchisor, KS Investments reviewed the Bills of Lading, the employee records, the receivable

records of the franchisees, the equipment, the equipment leases and the basic operation of the franchisees. (Transcript, Page 33, ll 3-11).

Mr. Parker and his staff prepared a notebook outlining the investigation and presented the notebook to the Commission. The notebook was entered into evidence as Hearing Exhibit No. 4. Mr. Parker testified that he had questions about the relationships between KS Investments. and the franchisees and the franchisees operating under the K&K Class E (HHG) Certificate of Public Convenience and Necessity prior to the issuance of certificates to the franchisees. Mr. Parker began his testimony with the Big Five investigation. Mr. Parker testified that Big Five signed a franchise with KS Investments, Inc. on January 22, 2004 and a vehicle lease agreement on April 9, 2004. The vehicle lease agreement was effective from April 9, 2004 to November 1, 2004. The Big Five hearing took place on September 16, 2004. (Transcript, Page 34, ll 2-18). The Certificate was issued by the Commission on October 12, 2004. (Transcript, Page 34, l 25 and P 35, l 1). Mr. Parker presented evidence that Big Five purchased trucks, opened a checking account, hired employees and began moving household goods prior to the issuance of the certificate. (Transcript, Page 35, l 11 – P 37, 14). Mr. Parker testified before the Commission that he analyzed the Bills of Lading, the checking account, the Weekly Sales & Royalty payments, the Bill of Sale for the vehicles and the Master Lease Agreement. (Transcript, Page 35, l 11 – P 38, l 25).

Mr. Parker testified that the focus of the audits was to determine who had exclusive possession and control of the vehicles. He quoted from paragraph 4 of the Big Five Lease Agreement which states, “Lessor shall have exclusive possession, control and use of the vehicles and shall keep the vehicles insured as required by the Public Service Commission” and that “rates to be charged for services shall be those approved for the Lessee by the Public Services

Commission, and the Bills of Lading of the Lessee shall be used.” (Transcript, Page 39, 11). Mr. Parker testified that for the lease to be a proper document, it should have stated that the Lessee, which is K&K, would have exclusive possession, control and use of the vehicles. Mr. Parker further testified that this was not the case at the time ORS audited Big Five. (Transcript, Page 39, 11-17). Mr. Parker testified that Big Five had purchased its own trucks and served the public with its own employees. (Transcript, Page 40, p 6-10)

Mr. Parker testified that Jack Pringle notified Big Five that these operating problems needed to be corrected and that in an attempt to correct the problem, K&K Enterprises put the Big Five employees on the K&K payroll so that K&K could move toward exclusive possession and control of the trucks. K&K would pay the employees to book the moves, dispatch the trucks, collect the revenues and deposit them in K&K’s account.

Mr. Parker next testified with respect to the ORS investigation of Trega, LLC, from June 6, 2001 to December 18, 2001. The date of Trega’s application was June 6, 2001. On August 28, 2001, the franchise agreement was signed. The hearing before the PSC took place on September 6, 2001 and the PSC issued the certificate on December 18, 2001 (Transcript, Page 40, 11 18-22). Mr. Parker testified that some of the employees were hired by Carl’s,¹ but that Trega paid the employees. (Transcript, Pages 41, 11 5 through P 42, 11 11). Trega paid for the insurance on the vehicles and paid royalties to KS Investments prior to the issuance of the certificate (Transcript, Page 43, 11 1-19).

Mr. Parker then testified concerning the Loofar investigation. On March 19, 2004, the franchise agreement was signed. The application was dated June 21, 2004 and subsequently

¹ Carl’s, Inc. is the name of the corporation that Kim Swanson owned and operated when she first received authority from the Commission to move household goods in September 1995. Carl’s, Inc. received statewide authority from the Commission in 1997. KS Investments, Inc. sold the first franchise to Carl’s, Inc. in 1998 (Transcript, Page 99, 11 16 to Page 107, 11 2).

filed with the Commission on October 12, 2004. The hearing was held on January 27, 2005 and the certificate was issued on March 29, 2005. Mr. Parker testified that Loofar employed its own employees and set up accounts prior to the issuance of the certificate. Mr. Parker also testified that the lease agreement from January 9, 2004 to January 9, 2005, was not a valid vehicle lease because the lessor and lessee were reversed in the lease agreement (Transcript, Page 44; line 6 through P 45, line 13).

Mr. Parker last testified that the purpose of Regulation 103-220 is to allow a certificate holder to lease a vehicle from an individual or another company. He further testified that Regulation 103-135 (Application to Lease a Certificate of Public Convenience and Necessity) provides that if the application is for approval of a lease of a certificate, a copy of the proposed lease agreement must be filed with the application and must contain the entire agreement between the parties. Only one entity may operate at a time per certificate. Mr. Parker testified that no lease agreements were filed with the Commission (Transcript, Page 46, ll 4 through P 47, l. 4).

Mr. Parker testified that Mr. and Mrs. Swanson immediately made arrangements to correct the problem by transferring Loofar employees to K&K and ensuring that exclusive possession and control would be exercised by K&K after Big Five's attorney recommended they do so in September of 2004 (Transcript, Page 47, ll. 12-18; Page 63, l. 25 through Page 64, l. 10). Mr. Parker stated that no complaints against K&K have been filed with the Consumer Services division of ORS.

The ORS next presented the testimony pursuant to subpoena of Reba Louise Farris, one of the owners of Loofar. Ms. Farris testified that she and her husband purchased the franchise in March 2004 and conducted the first move around July 2004 (Transcript, Page 51, ll 22-25). Ms.

Farris testified that she was concerned about the lease agreement because it seemed backwards to her. She further testified that she had the impression Loofar was operating under KS Investments or K&K's authority (Transcript, Page 52, ll 5-21). Ms. Farris testified that moves were conducted from July 2004 until February 2005 when Loofar received its own authority (Transcript, Page 52, ll 22-23).

Testifying for the Respondent K&K Investments, Inc. were Ken Swanson owner of K&K Investments and his wife Kim Swanson the owner and operator of KS Investments.

Ms. Swanson testified that beginning in 1998, KS Investments developed a business as a franchisor of moving businesses. At that time, she retained South Carolina counsel to assist her in designing a franchise system that complied with state regulatory law. Ms. Swanson hired Charleston attorney Billy C. Killough who, in consultation with David Butler of the Commission, developed the first franchise agreement between KS Investments and Carl's, Inc., a Charleston mover (Transcript Page 104, l.1 through Page 105, l. 25). In 2000, KS Investments had entered into franchise agreements in Louisville, Kentucky in the year 2000 and subsequently entered into franchise agreements with Trey Ingram in Charleston in 2001, Trega in 2003, Big Five in Myrtle Beach in 2004 and Loofar in Beaufort in 2004. Ms. Swanson testified that KS Investments has not entered any franchise agreements since that time (Transcript, Page 106, l. 1 through Page 107, l. 4; Page 109, ll 3-13).

Ms. Swanson testified that each franchise contained a provision that KS Investments would not sell another franchise in the same geographical territory sought by a franchisee. The franchisee would then apply to the Commission for a service territory. At no time did KS Investments attempt to dictate to the Commission the service territory to be approved for its franchisees (Transcript, Page 110, l. 3 through Page 111, l. 6).

Ms. Swanson testified that prior to entering the business of franchising movers, she operated Carl's, Inc. a certificated mover. Carl's, Inc. was originally certificated in 1995 with limited territory. Carl's, Inc. specialized in small moves and Ms. Swanson developed a computerized pricing system that enabled her to quote prices for her customers quickly and accurately permitting her to guarantee her price quotes. Subsequently, the Commission authorized Carl's, Inc. to expand its territory statewide. (Transcript, Page 99, l. 18 through Page 103, l. 18). Carl's, Inc. operated primarily out of Charleston and Ms. Swanson testified that when she moved from the Charleston area, she sold the Charleston franchise to Trey Ingram who continued to operate from the Charleston area. Carl's, Inc. was subsequently dissolved.

Ms. Swanson testified that with every important decision made with respect to her moving business or franchise business, she endeavored to ascertain the statutes, rules and regulations governing her businesses (Transcript, Page 114, ll. 3-6). She worked with legal counsel and the PSC in an effort to attempt to operate within the law. For instance, as early as 2001 when establishing her franchise with Trey Ingram, she retained private counsel in Charleston, Billy Killough, to draw an appropriate vehicle lease between K&K and the franchisee (Transcript, Page 113, ll. 3-25). The equipment lease was to permit the franchisee to lease trucks and equipment to the certificated mover which would use the leased equipment in authorized moves; the lease payments to the franchisee would permit it to defray its costs of ownership of the lease equipment until the franchisee was authorized by the Commission to do business. Ms. Swanson understood that her counsel consulted and worked with Commission counsel to ensure that the lease process conformed with applicable law (Transcript, Page 112, l. 7 through Page 113, l. 6). The audit revealed that the Trega lease contained the correct language concerning the lessor and lessee (Transcript, Page 44, ll. 1-3). Some time later in 2004, during a

detailed week long audit by the Department of Transportation, an inspector, Terry Harvey, raised two questions of K&K. The first question concerned the signage on K&K vehicles and the second question concerned the lease between K&K and the franchisees. Officer Harvey required no other changes of K&K, the audit being otherwise satisfactory (Transcript, Page 114, l. 24 through Page 116, l. 6). Officer Harvey advised Ms. Swanson to consult with J. L. Keller, a resource other movers rely on for lease forms. J. L. Keller provided lease samples and through Officer Harvey's "guidance" prepared lease agreements which she understood complied with state law (Transcript, Page 116, ll. 3-21) As a result, the lease agreements between K&K and the franchisees were modified to satisfy the requirements set out by Terry Harvey with the DOT. Officer Harvey offered to fax the revised lease forms to the Commission (Transcript, Page 117, l. 2010). Ms. Swanson understood that the leases were faxed to the Commission. Subsequently, Ms. Swanson was advised that the leases were not competent for their intended purpose. However, when Ms. Swanson was advised of this, the leases had been terminated because the franchisee had been given their authority by the Commission (Transcript, Page 117, ll. 11-18).

In addition, when questions were raised concerning the employment of K&K of the employees of the franchisees, K&K quickly moved to comply with Commission requirements. Indeed, K&K made the employment changes immediately upon learning of the need to do so (Transcript, Page 118, ll 2011). K&K and KS Investments do not anticipate the future need for lease arrangements (Transcript, Page 117, l. 24 through Page 118, L. 2).

Similarly, when questions were raised about K&K's authority to charge surcharges and recover the costs of taxes or insurance, she consulted Harold Calloway of the Commission for confirmation that these charges conformed with state law. K&K's tariff provided for charging a gas surcharge and, therefore, Mr. Calloway's advise that they may add the surcharge to their

billing seemed reasonable (Transcript, Page 120, l. 1 through Page 121, l. 21). Ms. Swanson testified that once it was brought to her attention that her charges did not conform with K&K's tariff, she promptly complied with the requirements of state law.

Ms. Swanson testified that Maria Walker, an auditor with the PSC was familiar with her books and records and while Ms. Walker pointed out few if any, irregularities in K&K's record keeping, Ms. Swanson was eager to comply with any direction or recommendations Ms. Walker might have. Ms. Swanson attempted to work closely with the ORS to answer any questions they had with respect to KS Investments or K&K and was eager to do so (Transcript, Page 118, l. 12 – Page 119, l. 21; Page 122, l. 14 through Page 123, l. 12).

Ken Swanson testified that he owned K&K Investments and his duties included scheduling, supervision of moves and generally supervising the Greenville, South Carolina moving operation (Transcript, Page 134, ll. 1-17). Mr. Swanson testified as to the accuracy of the computer program and the guaranteed pricing system and the manner of its operation. Mr. Swanson stressed that the customers were given an opportunity to accept the guaranteed price quote or a move on an hourly basis and that the overwhelming number of his customers chose the guaranteed price quote (Transcript, Page 134, l. 23, Page 135, l. 21). Mr. Swanson testified that the majority of his business was commercial and his commercial contracts included institutions such as the Greenville County School System and Clemson University (Transcript, Page 136, l. 22 through Page 137, l. 12). Mr. Swanson testified that he no longer had leases with any other franchisees of KS Investments and had no intentions of entering such leases in the future (Transcript, Page 137, l. 13 through Page 138, l. 3)

. Mr. Swanson testified that Maria Walker of the Commission audited his records regularly and that he made every effort to cooperate with the Commission fully. Mr. Swanson

testified that Inspector Vowell of the ORS had audited K&K in April 2004. When Inspector Vowell advised Mr. Swanson that K&K was improperly charging surcharges on certain moves, he did not dispute her assertions and quickly made the changes to his billing to eliminate the surcharges (Transcript, Page 139, l. 6 through Page 140, l. 25). Mr. Swanson testified that having met with the ORS and explained the computerized pricing system that Inspector Vowell found upon returning to his office prior to the hearing that K&K records had not only been corrected but were now in compliance with K&K's tariff (Transcript, Page 141, ll. 1-25).

Last, Mr. Swanson testified that he and K&K worked very diligently to satisfy their customers. Mr. Swanson testified that he had had no complaints through the Better Business Bureau nor had he had any complaints through the PSC or the ORS. Mr. Swanson testified as to the importance of complying with all regulations pertaining to the moving business (Transcript, Page 142, ll. 1-23).

FINDINGS OF FACT

After thorough consideration of the entire record in the hearing, including the testimony and all exhibits, and the applicable law, the Commission makes the following findings of fact and conclusions of law:

1. K&K holds a Class E (HHG) certificate of public convenience and necessity to transport household goods, Certificate Number 9668-C as authorized by Order No. 2005-12 pursuant to Docket No. 2003-166-T and is subject to the jurisdiction of the Commission pursuant to S. C. Code Ann. § 58-5-10, et. seq. (Supp. 2004). K&K has not acted and does not act as a franchisor of moving businesses.

2. KS Investments is the franchisor and entered into franchise agreements with Carl's, Inc., the Big Five, Trega, and Loofar. KS Investments does not hold a Class E (HHG) certificate of public convenience and necessity.

3. The Commission is a state agency constituted pursuant to the laws of the State of South Carolina with its business offices located in Columbia, South Carolina and is responsible for the regulation of motor vehicle carriers operating for compensation as set forth in S.C. Code Ann. §58-23-10 et. seq. (Supp. 2004).

4. The ORS is a state agency charged with the duty and responsibility to "represent the public interest of South Carolina before the Commission." S.C. Code Ann. § 58-4-10 et. seq. (Supp. 2004).

5. On February 24, 2005, the Commission issued Order No. 2005-52 requesting ORS to perform an investigation of K&K's franchising practices, the dealings of K&K with potential franchisees, the relationship of those practices to K&K's operating authority, service and related matters. The Order further provided that ORS perform an audit of K&K, including an audit of K&K's books and that ORS determine whether K&K was in compliance with the Commission Rules and Regulations.

6. ORS completed its audit and presented the results of the audit to the Commission at the hearing held on October 6, 2005 at the Commission's office. The audit results revealed several deficiencies and violations of the Commission's Rules and Regulations.

7. K&K's bills of lading did not meet the standards of the Commission's Rules and Regulations as set forth in 26 S.C. Code Regs. 103-159 (Supp. 2004). Bills of Lading must contain, among other things, the name of the issuing carrier; the date the shipment was received by the carrier; the name and address of the consignor/shipper; the points of origin and

destination; the name and address of the consignee/receiver; the Public Service Commission identification number; the number of the bill of lading, as numbered consecutively in each motor carrier's own series at the time of printing; any accessorial or additional service charges in detail; and base liability amount of the carrier for its cargo. See 26 S.C. Code Regs. 103-159. Inspector Patty Vowell, Transportation Inspector for the ORS, testified that she performed compliance audits of K&K on April 20, 2005 and October 4, 2005. During the first audit, Inspector Vowell testified that the Bills of Lading were not numbered consecutively and that the PSC number was not present on the Bills of Lading. (Transcript, Page 13, ll 21-22). K&K did not dispute the finding of the ORS (Transcript, Page 139, l. 6 – Page 140, l. 25). As of the second compliance audit completed on October 4, 2005, Inspector Vowell testified that K&K had changed its bills of lading to include the PSC Certificate No. and that the Bills of Lading were numbered consecutively. (Transcript, Page 17, ll 14-17).

8. K&K failed to meet the standards established by the Commission's Rules and Regulations by imposing and charging rates or charges different from the rates and charges in K&K's approved tariff. Inspector Vowell testified that during the audit of the bills of lading from the April 20, 2005, audit there was a discrepancy between the amounts charged to customers as contained on the bills of lading and the amounts calculated using the approved tariff. When the charges would not calculate correctly, Mr. Swanson told her a gas surcharge/assessment had been added to recoup part of the money. 26 S.C. Code Regs. 103-198 (Supp. 2004) prohibits a motor carrier from charging, demanding, or collecting a greater, lesser, or different compensation for services rendered than the rates and charges specified in the lawfully applicable tariffs in effect. Inspector Vowell testified that when she advised Mr. Swanson that a gas surcharge/assessment could not be added unless the Commission approved it,

Mr. Swanson did not dispute her and stated that he would correct the problem. (Transcript, Page 14, ll 7-19). Inspector Vowell further testified that during her return audit on October 4, 2005, she audited approximately 25 Bills of Lading and found them to be in full compliance with the Commissions Rules and Regulations. She testified that Mr. and Mrs. Swanson cooperated fully with her (Transcript, Page 17, ll 17-25).

9. We find that K&K's lease agreements failed to meet the standards of the Commission's Rules and Regulations which had the effect of allowing the franchisees to conduct moves prior to being certificated by the Commission.

Mr. George Parker, Manager of the ORS Transportation Department, presented the results of the ORS investigation to the Commission. Mr. Parker testified that the Transportation Department investigated the franchisees (Big Five, Trega and Loofar) and their operating practices prior to the issuance of the Class E (HHG) Certificates of Public Convenience and Necessity. With respect to Big Five, Mr. Parker presented evidence that Big Five purchased trucks, opened a checking account, hired employees and began moving household goods prior to the issuance of the certificate (Transcript, Page 35, l 11 – Page 37, l 14). Mr. Parker further testified that that Big Five lease agreement stated that "Lessor shall have exclusive possession, control and use of the vehicles and shall keep the vehicles insured as required by the Public Service Commission" and that "rates to be charged for services shall be those approved for the Lessee by the Public Service Commission." (Transcript, Page 39, ll 11). Mr. Parker testified that for the lease to be a proper document, it should have stated that the Lessee (K&K) would have exclusive possession, control and use of the vehicle. Big Five, however, purchased the trucks, had possession and control of the vehicles and served the public with its employees. (Transcript,

Page 40, ll 6-10). Mr. Parker testified that K&K corrected these problems after an attorney representing Big Five notified Big Five about these problems after the hearing.

With respect to Trega, Mr. Parker testified that Trega paid for the insurance on the vehicles, conducted moves and paid royalties to KS Investments prior to the issuance of the Class E (HHG) certificate. Mr. Parker testified that the lease between K&K and Trega was proper. (Transcript Page 40, l 1 through Page 43, ll. 1-19).

With respect to Loofar, Mr. Parker testified that Loofar employed its own employees and set up accounts prior to the issuance of the Class E (HHG) certificate. However, K&K effected the transfer of Loofar's employees at the time the need to do so was brought to its attention after the Big Five hearing in September 2004 and before the Loofar hearing in 2005 (Transcript, Page 47, ll. 12-18; Transcript, Page 63, l. 25 through Page 64, l. 10). Mr. Parker also testified that the lease agreement was not a valid vehicle lease because the lessor and lessee were reversed in the agreement (Transcript, Page 44, line 6 through Page 45, line 13). Mrs. Reba Farris testified that she was concerned about the lease agreement because it seemed backwards to her and that she had the impression Loofar was operating under KS Investments or K&K's authority when moves were conducted from July 2004 until February 2005 when Loofar received its own authority. (Transcript, Page 52 ll 5-23).

Mr. Parker testified that the purpose of 26 S.C. Code Regs. 103-220 is to allow a certificate holder to lease a vehicle from an individual or another company and that 26 S.C. Code Regs. 103-135 provides that if the application is for approval of a lease of a certificate, a copy of the proposed lease agreement must be filed with the application and must contain the entire agreement between the parties. Further, only one entity may operate at a time per certificate. Mr. Parker testified that no lease agreements had been filed with the Commission. (Transcript,

Page 46, ll 4 – Page 47, l. 4). The evidence of record reflects the Swansons' efforts to meet the Commission's standards of compliance concerning these leases. The leases were terminated prior to the Commission's directive to the ORS to establish this docket, and K&K does not anticipate the further use of these leases.

10. K&K, acting through its officer, agents and employees has cooperated with ORS and has conformed its Bills of Lading and Vehicle Lease Agreements to comply with Commission Rules and Regulations. Mr. Parker informed the Commission that when Mr. and Mrs. Swanson were made aware of this situation, they immediately made arrangements to correct the problem by transferring employees to K&K and ensuring that exclusive possession and control would be exercised by K& K.

11. K&K's record of service to its customers is without blemish. The evidence in the record shows that the Bills of Lading contain complimentary comments on its customer service. Mr. Parker also testified that no complaints against K&K have been filed with the Consumer Services Division of ORS.

CONCLUSIONS OF LAW

1. K&K is responsible for knowing the statutes, rules and regulations of the Commission and for complying with these requirements. It is a well established principle of law in South Carolina that those who engage in a particular business bear the responsibility of familiarizing themselves with the applicable statutes and regulations governing the industry. S.C. Wildlife & Marine Resources Dept. v. Kunkle, 287 SC 177, 336 S.E.2d 468 (1985).

2. While K&K's practices with respect to the leasing of equipment, its Bills of Lading and its fuel assessment did not meet the standards of the Commission's Rules and

Regulations, K&K, upon notification of violations of the Commission's Rules and Regulations, undertook prompt action to comply with the requirements of the Commission and to conform its practices to those required by state law.

3. Although K&K, as a motor carrier operating pursuant to a Certificate of Public Convenience and Necessity issued by the Commission, is required to know and comply with the laws and regulations governing its operations, the Commission concludes that K&K has, for purposes of the instant proceeding only, shown and demonstrated sufficient mitigation of the reported violations of the Commission's Rules and Regulations for the Commission to conclude that revocation of K&K's Certificate of Public Convenience and Necessity is not required or necessary. K&K's prompt action with correcting the violations and deficiencies demonstrated a willingness to comply with the laws governing its operations.

4. The Commission further concludes that a clear admonition is warranted, and K&K is hereby admonished that the Commission does not, and will not, tolerate continued violations of the law governing for-hire motor carriers. K&K has undertaken to provide for-hire, regulated transportation services within the State of South Carolina. In submitting to the jurisdiction of this Commission, K&K has, through its owners and agents, sworn to operate in compliance with the laws of this State. K&K is engaged in a business that is regulated by the State of South Carolina. Compliance with the laws governing that business is mandatory.

5. As the investigation of K&K ordered by the Commission in Order No. 2005-52 has been completed by ORS and as the results of the investigation have been presented to the Commission, the Commission concludes that the instant docket should be closed.

IT IS THEREFORE ORDERED THAT:

1. The Commission takes no action against K&K's Certificate of Public Convenience and Necessity.
2. K&K shall comply with all statutes, rules and regulations of the Commission.
3. K&K shall file timely reports for gross receipts, annual reports and any other reports required by the Commission or ORS.
4. K&K shall fully cooperate with any and all ORS audits.
5. K&K shall not allow any motor carrier applicants to operate under K&K's certificate.
6. Any future vehicle lease agreements shall be prepared in compliance with the Commission's rules and regulations and shall be filed with the Commission .
7. All proposed tariffs, requests for rate increases, fuel surcharge/assessments, or other requests for changes to K&K's rates and charges shall be filed with the Commission, and K&K shall obtain written Commission approval before any new tariffs, rate increases, fuel surcharge/assessments, or other changes in rates and charges are collected.
8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST

O' Neal Hamilton, Vice-Chairman
(SEAL)